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SENATE

TREATY DOC.
No. 98-6

1983 TAX CONVENTION WITH THE KINGDOM OF DENMARK

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES, INHERITANCES, GIFTS, AND CERTAIN OTHER TRANSFERS, SIGNED AT WASHINGTON ON APRIL 27, 1983

SEPTEMBER 13, 1983.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 8, 1983.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates, Inheritances, Gifts and Certain Other Transfers, signed at Washington on April 27, 1983.

The Convention is the first of its kind to be negotiated between the United States and Denmark. It will apply, in the United States, to the Federal estate tax, the Federal gift tax, and the Federal tax on generation-skipping transfers and, in Denmark, to the duty on inheritances and gifts.

A principal feature of the Convention is that the country of the transferor's domicile may tax transfers of estates and gifts and generation-skipping transfers on a worldwide basis, but must credit tax paid to the other State on the basis of location or *situs* of specified types of property.

I recommend that the Senate give early and favorable consideration to the Convention and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 8, 1983.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates, Inheritances, Gifts, and Certain Other Transfers, signed at Washington on April 27, 1983.

The Convention is similar in principle to the United States estate and gift tax convention with the United Kingdom, which entered into force on November 11, 1979 and the estate and gift tax convention with France, which entered into force on October 1, 1980. It is also similar to the United States model estate and gift tax convention, published by the Treasury Department on December 8, 1980. The details of some provisions, however, differ from those in the United Kingdom or French conventions, or the United States model.

The general principle underlying the Convention is that the country of the transferor's domicile may tax transfers of estates and gifts ("transfers") and generation-skipping transfers ("deemed transfers") on a worldwide basis, but must credit tax paid to the other State on the basis of the location or *situs* of specified types of property. Specifically, real property and certain business assets are taxable in the Contracting State where situated. The Convention also allows the United States and Denmark to tax transfers and deemed transfers of its citizens, provided a credit is given for tax paid to the other State.

The Convention provides rules for determining which State has the right to tax on a worldwide basis in the case of an individual who is domiciled in both Contracting States at the time of transfer or deemed transfer. It provides that a United States citizen who is domiciled in both the United States and Denmark shall be deemed to be domiciled in the United States if he was not domiciled in Denmark, under Danish law, for more than five of the seven years preceding the relevant transfer or deemed transfer. The effect of this rule is that Denmark generally may not subject the transfers or deemed transfers of a United States citizen and domiciliary to tax on a worldwide basis if he has been domiciled in Denmark for less than five of the previous seven years. When the five out of seven rule does not apply, the Convention provides a set of additional rules for resolving the issue of domicile. The rules for determining domicile are reciprocal.

In addition, the Convention provides reciprocal relief for interspousal transfers by a domiciliary of the other Contracting State. With respect to a decedent domiciled in Denmark, the United States provides the same marital deduction as it allows to a decedent domiciled in the United States. The tax rates applied to a domiciliary are then applied to the tax base so determined. With respect to a decedent domiciled in the United States, the Convention provides that Denmark shall compute its tax as though the provisions of Danish law regulating matrimonial property rights are applicable.

The Convention will enter into force when both Governments have notified each other that their respective constitutional requirements have been met. Its provisions will have effect with respect to transfers of estates of individuals dying, gifts made, and deemed transfers occurring on or after the date of entry into force.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted.

GEORGE P. SHULTZ.

Convention Between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Estates, Inheritances, Gifts and Certain Other Transfers

The Government of the United States of America and the Government of the Kingdom of Denmark, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances, gifts and certain other transfers, have agreed as follows:

Article 1

Personal Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to

(a) transfers of estates of individuals whose domicile at their death was in one or both of the Contracting States;

(b) gifts of donors whose domicile at the time of gift was in one or both of the Contracting States; and

(c) generation-skipping transfers of deemed transferors whose domicile at the time of deemed transfer was in one or both of the Contracting States.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded

(a) by the laws of either Contracting State; or

(b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of this Convention except paragraph 4 of this Article, a Contracting State may tax transfers of estates, gifts, and generation-skipping transfers of its domiciliaries (within the meaning of Article 4 (Fiscal Domicile)), and by reason of citizenship may tax transfers of estates, gifts, and generation-skipping transfers of its citizens, as if this Convention had not come into effect. For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of any tax (including, for this purpose, income tax), but only for a period of ten years following such loss.

4. The provisions of paragraph 3 shall not affect:

(a) the benefits conferred by a Contracting State under Articles 10 (Relief From Double Taxation), 11 (Non-Discrimination), and 12 (Mutual Agreement Procedure); and

(b) with respect to individuals who are neither citizens of, nor have permanent residence in, a Contracting State, the benefits conferred by that State under Article 14 (Diplomatic Agents and Consular Officers).

ARTICLE 2

Taxes Covered

1. The taxes to which this Convention applies are:

(a) in the United States: the Federal estate tax; the Federal gift tax; and the Federal tax on generation-skipping transfers.

(b) in Denmark: the duty on inheritances and gifts.

2. This Convention shall also apply to any identical or substantially similar taxes and duties on estates, inheritances, gifts, and other transfers, which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes and duties. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the term "United States" means the United States of America and, where used in a geographical sense, includes any area outside the territorial sea of the United States which, in accordance with international law and the laws of the United States, has been or may hereafter be designated as an area within which the United States may exercise rights with respect to the exploration and exploitation of the natural resources of the seabed or its subsoil; the term "United States" does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession.

(b) the term "Denmark" means the Kingdom of Denmark and, where used in a geographical sense, includes any area outside the territorial sea of Denmark which, in accordance with international law and the laws of Denmark, has been or may hereafter be designated as an area within which Denmark may exercise rights with respect to the exploration and exploitation of the natural resources of the seabed or its subsoil; the term "Denmark" does not comprise the Faroe Islands or Greenland.

(c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a domiciliary of a Contracting State and an enterprise carried on by a domiciliary of the other Contracting State.

(d) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State.

(e) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in Denmark: the Minister for Inland Revenue, Customs, and Excise or his authorized representative.

(f) the terms "Contracting State" and "the other Contracting State" mean Denmark or the United States, as the context requires.

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article 12 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which this Convention applies.

ARTICLE 4

Fiscal Domicile

1. For the purposes of this Convention, an individual has a domicile

(a) in the United States, if he is a resident or citizen thereof under United States law;

(b) in Denmark, if he is a resident thereof under Danish law.

2. Where by reason of the provisions of paragraph 1 an individual was domiciled in both Contracting States, then, subject to the provisions of paragraph 3, his status shall be determined as follows:

(a) the individual shall be deemed to have been domiciled in the Contracting State in which he had a permanent home available; if such individual had a permanent home available in both States, he shall be deemed to have been domiciled in the State with which his personal and economic relations were closer (center of vital interests);

(b) if the State in which the individual had his center of vital interests cannot be determined, or if he had no permanent home available in either State, he shall be deemed to have been domiciled in the State in which he had an habitual abode;

(c) if the individual had an habitual abode in both States or in neither of them, the component authorities of the Contracting States shall settle the question by mutual agreement.

3. Where an individual, at the date of his death or the making of a gift or deemed transfer, was

(a) a citizen of one Contracting State, and not also a citizen of the other Contracting State, and

(b) by reason of the provisions of paragraph 1 domiciled in both Contracting States, and

(c) by reason of the provisions of paragraph 1 domiciled in the other Contracting State in the aggregate less than five years (including periods of temporary absence) during the preceding seven year period,

then the domicile of that individual shall be deemed, notwithstanding the provisions of paragraph 2, to be in the Contracting State of which he was a citizen.

4. An individual who, at the date of his death or the making of a gift or deemed transfer, was a resident of a possession of the United States and who became a citizen of the United States solely by reason of his (a) being a citizen of a possession, or (b) birth or residence within a possession, shall be considered as having been neither domiciled in nor a citizen of the United States for the purposes of this Convention.

ARTICLE 5

Real Property

1. Transfers and deemed transfers of real property situated in a Contracting State may be taxed in that State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property, and rights to variable or fixed payments as consideration for the working of, or the rights to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as real property.

ARTICLE 6

Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base used for the Performance of Independent Personal Services

1. Except for assets referred to in Articles 5 (Real Property) and 7 (Ships and Aircraft), transfers and deemed transfers of assets forming part of the business property of a permanent establishment may be taxed in the Contracting State in which the permanent establishment is situated.

2. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

3. The term "permanent establishment" includes especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop; and
(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

4. A building site or construction or installation projects constitutes a permanent establishment only if it lasts for more than twelve months.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in clauses (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from the combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 2 and 3, where a person—other than an agent of an independent status to whom paragraph 7 applies—is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker. general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. Except for assets described in Article 5 (Real Property), transfers and deemed transfers of assets pertaining to a fixed base used for the performance of independent personal services may be taxed in the Contracting State in which the fixed base is situated.

Article 7

Ships and Aircraft

Notwithstanding Article 6 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services), transfers and deemed transfers of ships and aircraft belonging to a domiciliary of a Contracting State and operated in international traffic, and of movable property pertaining to the operation of such ships and aircraft, including containers, shall be taxable only in that State.

Article 8

Property Not Expressly Mentioned

Transfers and deemed transfers of property other than property referred to in Article 5 (Real Property), 6 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services), and 7 (Ships and Aircraft), shall be taxable only in the Contracting State in which the deceased or transferor was domiciled at the date of his death or the making of the gift or deemed transfer.

ARTICLE 9

Reductions

1. The transfer or deemed transfer of property to or for the use of a Contracting State or a political subdivision or local authority thereof, or to a corporation or organization of a Contracting State operated exclusively for religious, charitable, scientific, literary, or educational purposes, if such transfer is exempt from tax or taxed at a reduced rate in that State, shall be treated by the other Contracting State as if such transfer or deemed transfer were made to a similar corporation or organization of that other State.

2. In the case of property which passes from a decedent

(a) domiciled (within the meaning of Article 4 (Fiscal Domicile)) in Denmark to the spouse of such decedent, the United States shall, in computing its tax, allow the same marital deduction that would be allowed with respect to a decedent domiciled in the United States, and in such case the tax rates that would be applicable if the decedent had been domiciled in the United States shall apply. If the United States tax determined without regard to the preceding sentence is lower than that computed under the preceding sentence, the lower tax shall apply.

(b) domiciled (within the meaning of Article 4 (Fiscal Domicile)) in the United States to the spouse of such decedent, Denmark shall, if the spouse so requests, compute its tax as if the provisions of Danish law regulating matrimonial property rights were applicable to such property.

ARTICLE 10

Relief From Double Taxation

1. Where the United States imposes tax by reason of an individual's domicile therein or citizenship thereof, double taxation shall be avoided in the following manner:

(a) where Denmark imposes tax with respect to the transfer or deemed transfer of property in accordance with Articles 5 (Real Property) or 6 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services), the United States shall allow as a credit against the tax calculated according to its law with respect to such transfer or deemed transfer an amount equal to the tax paid to Denmark with respect to such transfer or deemed transfer.

(b) in addition to any credit allowable under subparagraph (a), if the individual was a citizen of the United States and was domiciled in Denmark at the date of his death, gift, or deemed transfer, then the United States shall allow as a credit against the tax calculated according to its law with respect to the transfer or deemed transfer of property (other than property whose transfer or deemed transfer the United States may tax in accordance with Articles 5 (Real Property) or 6 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used

for the Performance of Independent Personal Services)) an amount equal to the tax paid to Denmark with respect to such transfer or deemed transfer.

2. Where Denmark imposes tax by reason of an individual's domicile therein, double taxation shall be avoided in the following manner: Where the United States imposes tax with respect to the transfer or deemed transfer of property in accordance with Articles 5 (Real Property) or 6 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services), Denmark shall allow as a credit against the tax calculated according to its law with respect to such transfer or deemed transfer an amount equal to the tax paid to the United States with respect to such transfer or deemed transfer.

3. If a Contracting State imposes tax upon the tranfer of an estate, the credit allowed by paragraph 1 or 2 shall include credit for any tax imposed by the other Contracting State upon a prior gift of property made by, or a prior generation-skipping transfer of property deemed made by, the decedent, if transfer of such property is subject to the tax on the transfer of the estate imposed by the first-mentioned State.

4. The credit allowed by a Contracting State under paragraph 1 or 2 shall not be reduced by any credit allowed by the other Contracting State for taxes paid upon prior transfers or deemed transfers.

5. The credit allowed by Denmark according to the provision of paragraphs 2 and 3 shall include credit for taxes paid to political subdivisions of the United States, to the extent that such taxes are allowed as credits by the United States.

6. Any credit allowed under paragraphs 1 and 2 shall not exceed the part of the tax of a Contracting State, as computed before the credit is given, which is attributable to the transfer or deemed transfer of property in respect of which a credit is allowable under such paragraphs.

7. Any claim for credit or for refund of tax founded on the provisions of this Article may be made until two years after the final determination (administrative or judicial) and payment of tax for which any credit under this Article is claimed, provided that the determination and payment are made within ten years of the date of death, gift, or deemed transfer. The competent authorities may by mutual agreement extend the ten-year time limit if circumstances prevent the determination of the taxes which are the subject of the claim for credit. Any refund based solely on the provisions of this Convention shall be made without payment of interest on the amount so refunded.

Article 11

Nondiscrimination

1. Citizens of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected. This provision shall also apply to persons who are not domiciliaries of a Contracting State.

However, for purposes of the United States taxation of transfers and deemed transfers, United States citizens not domiciled in the United States are not in the same circumstances as Danish citizens not domiciled in the United States.

2. The taxation on a transfer or deemed transfer of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on transfers or deemed transfers of enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 12

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authorities of either Contracting State. Such presentation must be made within one year after a claim for exemption, credit, or refund under this Convention has been finally settled or rejected.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view of the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 13

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning the taxes to which this Convention applies insofar as the taxation thereunder is not contrary to the Convention. The

exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration, assessment, or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Convention applies. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (order public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by the other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

4. For the purpose of this Article, this Convention shall apply not only to the taxes to which the Convention otherwise applies but also to taxes of every kind and description imposed by the Contracting States.

Article 14

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 15

Entry into Force

1. The Governments of the Contracting States shall notify each other through diplomatic channels when the constitutional requirements for the entry into force of this Convention have been satisfied.

2. This Convention shall enter into force upon receipt of the latter of the notifications referred to in paragraph 1, and the provisions of the Convention shall have effect in respect of transfers of estates of individuals dying, gifts made, and deemed transfers occurring on or after the date of entry into force.

ARTICLE 16

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after five years from the date on which the Convention enters into force, by giving at least six months' prior notice of termination through diplomatic channels. In such event, the Convention shall have no effect in respect of transfers of estates of individuals dying, gifts made, and deemed transfers occurring after the December 31 next following the date of termination specified in the notice of termination.

Done at Washington, in duplicate, in the Danish and English languages, the two texts having equal authenticity, this twenty-seventh day of April, 1983.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Robert D. Blackwill

FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK:

H. E. Boesen

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